

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

YOHANCE KITSON, #212909

V.

DEPUTY FERGUSON, ET AL.

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CIVIL ACTION NO. G-06-271

ORDER OF DISMISSAL

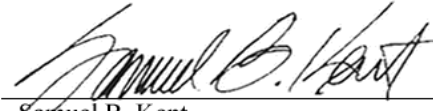
Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on June 19, 2006, which recommends that the above-styled cause be dismissed with prejudice as frivolous. Plaintiff has filed objections to the Report and Recommendation, reasserting facts which have already been pleaded and which were correctly addressed by the Magistrate Judge. Plaintiff's claims, even if true, fail to rise to the level of a constitutional violation cognizable under Section 1983.

After *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court is of the opinion that the Report and Recommendation of the Magistrate Judge should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein. It is the **ORDER** of this Court that this cause is **DISMISSED** with prejudice as frivolous and for failure to state a claim for which relief can be granted.

This Order does not release Plaintiff or the Texas Department of Criminal Justice, Institutions Division from the obligation to pay the filing fee previously imposed. Plaintiff is advised that if he appeals this dismissal, he will be required to pay the appeal fee of \$455.00 pursuant to the Prison Litigation Reform Act, and he must submit a 6-month certificate of his inmate trust account when he files his notice of appeal.

A certified copy of this Order shall be mailed to: **TDCJ-Office of the General Counsel**, P.O. Box 13084, Austin, Texas, 78711; and, to **TDCJ Local Funds Division**, P.O. Box 629, Huntsville, TX 77342-0629.

DONE at Galveston, Texas, this the 17th day of July, 2006.



Samuel B. Kent
United States District Judge